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The Dow Chemical Company
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In re Application of
SONNENSCHNEIDER et al.
U.S. Application No. 10/588,622
PCT Filing Date: February 2004
Attorney Docket No. 63344A

For: AQUEOUS-BASED ADHESIVE FOR
BONDING LOW SURFACE ENERGY
SUBSTRATES

DECISION ON PETITION

This is a decision on the "Petition under 37 CFR 1.78(a)" filed March 12, 2010. The stated purpose of the petition is "to accept the unintentionally delayed benefit claim under 35 U.S.C. 120 for the benefit of PCT International Patent Application number PCT/US2005/004097 filed 10 February 2005 and benefit claim under 35 U.S.C. 119(e) for benefit of U.S. Provisional Patent Application Number 60/546,891, filed 23 February 2004."

The petition is dismissed as moot for the reasons stated below.

As set forth in MPEP 1893.03(c), a national stage application filed under 35 U.S.C. § 371 may not claim benefit of the filing date of the international application of which it is the national stage since its filing date is the date of filing of that international application. *See also* MPEP 1893.03(b). Accordingly, it is not necessary for the applicant to amend the first sentence of the specification to reference the international application number that was used to identify the application during international processing of the application by the international authorities prior to commencement of the national stage under 35 U.S.C. § 371.

The current procedure where a claim for priority under 37 CFR §1.78(a)(6) is not included in the first sentence of the specification or in an ADS but does appear in the national stage application papers within the time period under 37 CFR 1.78(a)(5)(ii) and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR §1.78(a)(5)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s), a petition will be required to accept a late claim for priority under 37 CFR § 1.78(a)(6).¹ In the instant case, the Office

¹ Note MPEP 201.11 (III)(D).

noted the claim for priority of the prior-filed application as shown by its inclusion on the filing receipt.

In view of the dismissal of the instant petition as moot, the \$1410 fee will be refunded to counsel Deposit Account.

Any questions concerning this matter may be directed to Anthony Smith at (571) 272-3298. This matter is being referred to the appropriate Technology Center for examination in due course.


Boris Milef
Legal Examiner
Office of PCT Legal Administration